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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13  
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15

16 **THE PEOPLE OF THE STATE OF**  
17 **CALIFORNIA,**

Plaintiff,

18 **v.**

19  
20 **VITOL INC.; SK ENERGY AMERICAS,**  
21 **INC.; SK TRADING INTERNATIONAL**  
22 **CO. LTD.; AND DOES 1- 30, INCLUSIVE,**

Defendants.

Case No. CGC-20-584456

**PLAINTIFF THE PEOPLE OF THE**  
**STATE OF CALIFORNIA'S BRIEF IN**  
**SUPPORT OF JURISDICTIONAL**  
**DISCOVERY**

Dept: 613  
Judge: Hon. Andrew Y.S. Cheng  
Trial Date: None set  
Action Filed: May 11, 2020

1     **I.     Introduction**

2           Pursuant to this Court’s October 20, 2020 Order, Plaintiff, The People of the State of  
3     California, submit this brief in support of jurisdictional discovery as to this Court’s jurisdiction  
4     over Defendant SK Trading International (“SKTI”). Jurisdictional discovery is routinely granted  
5     in cases where, as here, a plaintiff can point to specific lines of inquiry that are likely to produce  
6     evidence establishing jurisdiction. In this case, jurisdictional discovery will develop specific lines  
7     of inquiry identified by the People’s pre-complaint investigation and will address the source of  
8     Mr. Jinwoo Jeong’s knowledge as to the conclusory statements in his declaration in support of  
9     SKTI’s Motion to Quash, as well as the facts supporting that knowledge. Accordingly, targeted  
10    jurisdictional discovery is likely to produce evidence establishing jurisdiction. In light of this,  
11    this Court should decline SKTI’s invitation to make dispositive findings of fact based on an  
12    incomplete record. Moreover, the instant case also presents the opportunity to efficiently  
13    coordinate jurisdictional discovery with the related consolidated federal class action currently  
14    pending in the Northern District of California. Such coordination will grant the Court the benefit  
15    of a more developed record at no or very limited additional burden to SKTI.

16    **II.    Factual Background and Procedural Posture**

17           The instant case challenges the illegal conduct of competing gasoline trading firms who  
18    worked together in secret to drive up and manipulate spot market prices for gasoline, ultimately  
19    driving up the cost of gasoline for California consumers. In the pre-complaint investigation  
20    (“investigation”), the People subpoenaed Defendant SK Energy Americas (“SKEA”), but did  
21    not at that juncture subpoena Defendant SKTI, one of its foreign parent entities. However, later  
22    in the investigation, after translating a number of key Korean-language documents produced by  
23    SKEA without accompanying translations, the People developed sufficient evidence to determine  
24    that SKEA operated at the instruction of, and under the control of, SKTI. For this reason, the  
25    People named both SKEA and SKTI as Defendants in the instant action.

26           In the Complaint, the People allege that at all relevant times, SKTI either exercised day-  
27    to-day control over SKEA such that SKEA served as its agent, or so disregarded the separateness  
28    of the two entities that the two were alter egos, and it would be inequitable to treat SKEA’s

1 actions as those of SKEA alone. (Compl. ¶¶ 20-22; 58-67; 99.) Both agency and alter ego  
2 theories of liability are sufficient to support personal jurisdiction. (See *Daimler AG v. Bauman*  
3 (2014) 571 U.S. 117, 135, fn. 13; *BBA Aviation PLC v. Superior Court* (2010) 190 Cal.App.4th  
4 421, 429; *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538-39.)  
5 Moreover, as California courts routinely hold that the act of directing a subsidiary's actions  
6 towards California constitute contacts with California for the purpose of a personal jurisdiction  
7 analysis, the People may also use SKTI's unity with and control of SKEA to establish SKTI's  
8 own minimum contacts to establish personal jurisdiction. (See *HealthMarkets, Inc. v. Superior*  
9 *Court* (2009) 171 Cal.App.4th 1160, 1173.)

10 In support of its pending Motion to Quash, SKTI filed a Declaration in Support from Mr.  
11 Jinwoo Jeong. During the relevant period, Mr. Jeong held a variety of positions in SK  
12 Innovation. (Jeong Decl. ¶ 2.) SK Innovation is another member of the SK corporate family, but  
13 not an entity that is party to this litigation. Though Mr. Jeong makes a number of conclusory  
14 statements—such as that SKTI “ensures in each case that the preconditions to each company’s  
15 separate corporate personhood are respected” and “does not control the daily operations of  
16 SKEA”—the source of his knowledge and the facts underpinning that knowledge are not  
17 immediately clear. (Jeong Decl. ¶¶ 7, 19.)

18 These statements, and others in Mr. Jeong's declaration, place Mr. Jeong's own  
19 knowledge, and the knowledge and facts supporting the conclusory statements in his declaration,  
20 at issue in this litigation. Moreover, many of these statements purport to address the contentions  
21 in the Complaint, but actually do not. As such, the People seek limited jurisdictional discovery  
22 along specific lines of inquiry identified by the People's investigation, and to assess the facts  
23 purportedly supporting the statements in Mr. Jeong's declaration and the source of Mr. Jeong's  
24 knowledge.

### 25 **III. Standard**

26 As the party who bears the burden of proof on a Motion to Quash, the People are entitled  
27 to conduct discovery to establish facts supporting personal jurisdiction. (See *Mihlon v. Sup. Ct.*  
28 (1985) 169 Cal.App.3d 703, 711 (hereafter *Mihlon*).) Indeed, Courts routinely grant jurisdictional

1 discovery. (See *Farina v. SAVWCL III, LLC* (2020) 50 Cal.App.5th 286, 293 [jurisdictional  
2 discovery granted in response to a motion to quash]; *Strasner v. Touchstone Wireless Repair &  
3 Logistics, LP* (2016) 5 Cal.App.5th 215, 221 [same]; *Young v. Daimler AG* (2014) 228  
4 Cal.App.4th 855, 860 [same] (hereafter *Young*).) Accordingly, though committed to the sound  
5 discretion of this Court, a court should grant a request for jurisdictional discovery where the  
6 plaintiff “demonstrate[s] that discovery is likely to lead to the production of evidence of facts  
7 establishing jurisdiction.” (See *In re Auto Antitrust Cases I and II* (2005) 135 Cal.App.4th 100  
8 (hereafter *Auto Antitrust*).) This liberal standard reflects that a Motion to Quash is meant to  
9 determine the reality of a Defendant’s relationship with the forum from a sufficient evidentiary  
10 record, and that record may be developed through jurisdictional discovery. (See *ViaView, Inc. v.  
11 Retzlaff* (2016) 1 Cal.App.5th 198, 216-217 [jurisdictional facts must be proved by evidence];  
12 *Mihlon, supra*, at p. 711 [plaintiff has the right to conduct discovery to develop facts to sustain its  
13 motion to quash burden]). By contrast, jurisdictional discovery is denied only when the plaintiff  
14 fails to show that further discovery is likely to lead to the production of evidence establishing  
15 jurisdiction. (See *Young, supra*, p. 867, fn. 7; *Auto Antitrust, supra*, at p. 127.)

#### 16 **IV. Jurisdictional Discovery is Likely to Produce Evidence of Jurisdiction**

17 In this case, the People have already alleged significant facts supporting jurisdiction,  
18 described *infra*, at IV, and have demonstrated that additional jurisdictional discovery is likely to  
19 produce additional relevant evidence establishing jurisdiction. Through jurisdictional discovery,  
20 the People will develop specific, factually supported, lines of inquiry and develop evidence to  
21 evaluate the facts and personal knowledge underpinning Mr. Jeong’s declaration, especially as to  
22 SKTI and its relationship with SKEA during the relevant time, and especially as the declaration  
23 fails to meaningfully address allegations in the Complaint. The nature of this discovery serves  
24 the very purpose of jurisdictional discovery: to build a more developed record from which the  
25 Court can make an informed decision as to SKTI’s relationship with California.

##### 26 **A. The Complaint Identifies Specific, Productive Lines of Inquiry**

27 Through the investigation, the People learned of meaningful facts to support this Court’s  
28 exercise of jurisdiction over SKTI. These facts were alleged in significant detail in the

1 Complaint, and adequately demonstrate both that the People had a good faith basis for invoking  
2 this Court’s jurisdiction over SKTI and that targeted jurisdictional discovery is likely to lead to  
3 the production of further evidence supporting jurisdiction. Because the People have not yet  
4 received document productions from SKTI, it is appropriate and will be productive to conduct  
5 jurisdictional discovery into the areas of unity with and control of SKEA discussed in the  
6 Complaint.

7 For example, the Complaint alleges that SKTI reviewed and approved SKEA’s business  
8 plans, determined SKEA’s position and loss limits, and promulgated a risk management policy  
9 that governed SKEA’s trades. (Compl. ¶ 60.) The Complaint also alleges that SKTI sent  
10 executives on trips to directly supervise SKEA’s operations, and meet with SKEA’s local  
11 business partners or competitors, including Defendant Vitol. (Compl. ¶ 62.) While these  
12 allegations find evidentiary support in SKEA’s investigation production, the nature of that  
13 evidentiary support itself demonstrates both that additional evidence of SKTI’s unity with and  
14 control over SKEA will be found in SKTI’s possession, and demonstrates the nature of at least  
15 some of that evidence. SKTI will likely possess both internal documents and communications  
16 with other SK Entities regarding these matters, SKEA generally, and regarding California  
17 gasoline. The existence and substance of such communications is likely to show SKTI exercising  
18 day-to-day control over SKEA by setting, approving and/or conducting SKEA’s business, or to  
19 show that there is no meaningful distinction between the businesses of the two entities. It is also  
20 likely to produce relevant jurisdictional contacts with California. This discovery is particularly  
21 relevant in light of SKTI’s contention that it has only the limited relationship of a grandparent  
22 entity with SKEA.

23 The Complaint similarly alleges that SKTI had a direct role in SKEA’s key hiring and  
24 staffing decisions related to California, including approving the hiring of both David Niemann  
25 (“Niemann”) and Shelly Mohammed (“Mohammed”), the trader and scheduler who worked in the  
26 California gasoline market. (Compl. ¶¶ 57-59.) The Complaint also alleges that at least one  
27 SKTI employee participated in Niemann’s reporting chain of command, going so far as to  
28 personally negotiate Niemann’s bonus directly with Niemann. (Compl. ¶ 59.) As with SKTI’s

1 involvement with SKEA's trading activities, the very nature of these allegations and their  
2 evidentiary support demonstrates that additional evidence of SKTI's unity with and control over  
3 SKEA will be found in SKTI's possession. For example, discovery into the SKTI business unit  
4 that approved the hiring of Niemann and Mohammed will provide significant insight into the  
5 nature of the relationship between the two entities, and particularly into whether there was such a  
6 unity between the two entities such that an employee of either entity was effectively an employee  
7 of both entities, or whether SKTI exercised such day-to-day control over SKEA that its approval  
8 was needed for even routine activities such as hiring employees. Discovery into the employment  
9 details of employees of either SKTI or SKEA who worked in California markets on behalf of  
10 SKEA, including the identities, selection processes, and activities of any SKTI employees who  
11 did work on behalf of SKEA, will allow similar insights. Moreover, the substance of such  
12 discovery, as it relates to SKEA's activities in California, will also likely reveal evidence of  
13 relevant jurisdictional contacts of SKTI.

14 **B. Discovery Into The Support for Mr. Jeong's Declaration is Likely to Produce**  
15 **Evidence Supporting Jurisdiction**

16 SKTI's Motion to Quash, and Mr. Jeong's declaration in support of that motion, fail to  
17 meaningfully address the Complaint's specific allegations of unity and control, instead  
18 responding with conclusory statements that provide no basis for the Court to make a  
19 determination of fact as to the basis of its jurisdiction over SKTI. For example, the Complaint  
20 alleges significant facts in support of SKTI's unity of interest and day-to-day control over SKEA,  
21 including SKTI's required approval before hiring the trader and scheduler who worked in the  
22 California market (Compl. ¶¶ 59, 63), SKTI's promulgating a risk management policy that  
23 governed SKEA's trades, including trades in the California (Compl. ¶ 60), and SKTI's approval  
24 of key decisions that are central to this case, including the decision to coordinate with Vitol  
25 (Compl. ¶¶ 61, 62, 64-67, 99). These detailed allegations are precise, specific, and entirely  
26 sufficient to separate SKTI's level of unity and day-to-day control from more limited corporate  
27 involvement from a grandparent entity. However, without meaningfully addressing those  
28

1 allegations, Mr. Jeong’s declaration includes the conclusory statement that “SKTI never exercised  
2 any day-to-day control over SKEA’s gasoline trading activities.” (Jeong Decl. ¶19.)

3 Moreover, the People were previously unaware of Mr. Jeong’s involvement in SKEA or  
4 SKTI, as his name was never raised in the investigation and, to the best of the People’s  
5 knowledge, his name appears in SKEA’s investigation production only once. Additionally, as  
6 Mr. Jeong was employed during the relevant period by a separate SK entity not named as a  
7 defendant in this action, and as his declaration does not reference specific facts or documents, it is  
8 not facially apparent how he could have personal knowledge of SKTI and its relationship with  
9 SKEA. Limited discovery into Mr. Jeong’s role in SKTI and SKEA during the relevant period—  
10 including, at least, a deposition to explore the facts supporting the statements in his declaration  
11 and the source of his knowledge as to the matters in his declaration—will more appropriately  
12 address the specific allegations in the People’s Complaint and provide the Court with a well-  
13 developed record from which to decide the Motion to Quash.

14 In the absence of jurisdictional discovery, the People lack any meaningful opportunity to  
15 test the accuracy of the unexplained and often conclusory statements contained in Mr. Jeong’s  
16 declaration. This absence is all the more significant because many of these conclusory  
17 statements—put forward by SKTI with full access to Mr. Jeong—purport to show that this  
18 Court’s exercise of jurisdiction over SKTI would be inappropriate, while largely ignoring the  
19 specific factual allegations in the Complaint. The People lack such access to Mr. Jeong,  
20 including a lack of documents, a lack of testimony, and a lack of any meaningful understanding  
21 of how Mr. Jeong could have personal knowledge of SKTI and its relationship with SKEA during  
22 the relevant period. Because SKTI has put Mr. Jeong’s personal experience and knowledge at  
23 issue, the People should, at a minimum, be permitted to test his assertions and their support.

24 As the party who carries the burden on a Motion to Quash, the People will be uniquely  
25 prejudiced by SKTI’s selection of a declarant about whom the People have no information, and  
26 by being required to respond to SKTI’s Motion to Quash in the absence of that information. Such  
27 an absence also will create an ambiguous and incomplete factual record from which the Court  
28 will be required to make a factual determination as to SKTI’s unity with and control over SKEA,

1 and SKTI's contacts with California. Such detailed questions of fact should be decided with the  
2 benefit of a well-developed, adequately tested record.

3 Finally, SKTI's Motion to Quash and Mr. Jeong's declaration also rely heavily on the role  
4 of SK Energy International ("SKEI"), another member of the SK corporate family not named as a  
5 defendant, as an intermediary parent corporation between SKEA and SKTI. However, these  
6 statements and allegations are likewise conclusory, and fail to explain how SKEI's status as an  
7 intermediary parent corporation undermines SKTI's unity with and control of SKEA. Moreover,  
8 while SKEA's investigation production allowed the People to determine that SKEA operated at  
9 the instruction of, and under the control of, SKTI, it did not allow the People to make similar  
10 allegations as to SKEI. Accordingly, limited jurisdictional discovery into what, if any, role SKEI  
11 played in the relationship between SKEA and SKTI during the relevant period will similarly  
12 resolve whether SKEI's presence somehow mitigates SKTI's control over SKEA, or whether  
13 these three entities' formal relationship is distinct from the day-to-day reality of their relationship.

14 These specific lines of inquiry stand in sharp contrast to cases in which courts have denied  
15 jurisdictional discovery. For example, in *Auto Antitrust*, the court denied a request for  
16 jurisdictional discovery after the plaintiff could not offer any facts "that would justify a  
17 reasonable belief that additional relevant jurisdictional evidence existed," despite being asked  
18 twice by the court. (*Auto Antitrust*, supra, at p. 127.) Here, by contrast, the People have  
19 described the specific factual basis for believing additional jurisdictional evidence exists, and  
20 what sort of evidence is likely to be discovered. Similarly, in *Thomas v. Anderson*, jurisdictional  
21 discovery was denied where the plaintiff "did not identify what kind of discovery she wanted to  
22 take or what kind of jurisdictional facts she believed discovery would disclose." (*Thomson v.*  
23 *Anderson* (2003) 113 Cal.App.4th 258, 271-272.) Unlike *Thomas*, in this case, the People have  
24 identified their specific lines of inquiry, including both those raised in the Complaint and those  
25 raised by Mr. Jeong's declaration, and the jurisdictional facts they expect the discovery to  
26 disclose. The factual detail supporting the People's request for jurisdictional discovery, as well as  
27 the specific lines of inquiry disclosed and the fact that Mr. Jeong's declaration does not  
28 meaningfully address the allegations in the Complaint, justifies a reasonable belief that



jurisdictional discovery will lead to the discovery of additional jurisdictional facts and provide a more well-developed record on which to decide the Motion to Quash.

**V. The People's Pre-Complaint Investigation is no bar to Jurisdictional Discovery**

The People understand Defendants' objection to jurisdictional discovery to be based predominantly, if not entirely, on the existence of the People's investigation. (Case Management Conference Statement filed October 9, 2020, pp. 9-10.) This argument, however, misrepresents the nature of the People's investigation. As noted above, as part of the People's pre-complaint investigation, the People subpoenaed SKEA, a subsidiary of SKTI, not SKTI itself. Throughout that investigation, the People learned that SKEA shared significant unity with SKTI, and that SKTI played a significant, day-to-day role in controlling SKEA, including SKEA's activities in California. The evidence uncovered in the investigation justified invoking this Court's jurisdiction over SKTI, and the People seek jurisdictional discovery not as a fishing expedition, but in response to SKTI's own Motion to Quash, which is replete with conclusory allegations and frequently fails to address the Complaint's specific factual allegations.

The instant case is a paradigmatic example of a case in which jurisdictional discovery adds value to litigation and should be granted. The People learned of SKTI's considerable role in SKEA's conduct late in the investigation, and only after translating and reviewing a number of key Korean-language documents produced by SKEA without accompanying English translations. While these documents were sufficient to support the People naming SKTI, and support the allegations in the Complaint, they are no substitute for targeted jurisdictional discovery on the issues put in dispute by SKTI in the Motion to Quash. Rather, the very presence of these documents produced by SKEA indicates that jurisdictional discovery is appropriate in this case, as it is likely to lead to the discovery of evidence of facts that support jurisdiction, and will at a minimum provide the Court with a better-developed record from which to make critical factual determinations.

It is of no import that the People could have expanded the scope of the investigation to seek jurisdictional discovery from SKTI. The investigation was focused on identifying violations of the law and ensuring that the allegations in the Complaint—including the allegations

1 supporting personal jurisdiction—were sufficiently supported by evidence, not conducting  
2 exhaustive jurisdictional discovery or responding to a hypothetical Motion to Quash. Indeed,  
3 requiring an investigation into potential violations of the law to conduct such jurisdictional  
4 discovery would be inefficient, making investigations significantly more burdensome on all  
5 subpoena recipients, including those that are never accused of wrongdoing.<sup>1</sup> The interests of  
6 efficiency and fairness are best served by allowing all plaintiffs access to all appropriate tools of  
7 civil discovery, including jurisdictional discovery.

#### 8 **VI. Jurisdictional Discovery Will Impose Little Burden on Defendants**

9 As the Court is aware, over 20 related federal class actions have been consolidated in the  
10 Northern District of California before Magistrate Judge Corley. The People believe that  
11 coordinating jurisdictional discovery between this action and the consolidated federal actions will  
12 grant the Court the benefit of a more developed record, and promote efficient resolution of the  
13 personal jurisdiction issues, at little or no additional burden to SKTI. At a minimum, the  
14 substance of jurisdictional discovery is likely to be substantially similar between the two forums,  
15 and the People have already made preliminary efforts to coordinate jurisdictional discovery  
16 between the two forums.

17 As part of those coordination efforts, the People and the plaintiffs in the federal actions  
18 have served substantially similar Requests for Production on SK Defendants. The People have  
19 also worked with plaintiffs in the federal actions to present SK Defendants with a Jurisdictional  
20 Discovery Plan, which the People attached to the Parties Joint Case Management Conference  
21 Statement filed on October 9, 2020, proposing to serve limited requests for production, a targeted  
22 set of interrogatories, and nine total hours of deposition divided among three deponents—Mr.  
23 Jeong, SKTI’s Distillate Book Leader Namho Kim, and a person most qualified deposition on  
24 general topics, also identified generally in the Jurisdictional Discovery Plan, pursuant to  
25 California Code of Civil Procedure section 2025.230 and Federal Rule of Civil Procedure

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26  
27 <sup>1</sup> Moreover, to the extent that SKTI contends that the People should have expanded the  
28 scope of the investigation to seek jurisdictional discovery, the People submit that the burden of  
such discovery would have been at least as great during the investigation, and without the  
additional benefit of coordination.

1 30(b)(6). Subsequently, the People have coordinated with plaintiffs in the federal actions and  
2 have already presented SK Defendants with 20 targeted discovery requests for production on each  
3 of SKEA and SKTI. These efforts present the opportunity for significant efficiency and for the  
4 Court to have a more fully-developed record on which to decide the Motion to Quash—all at  
5 limited or no additional burden to SKTI.

## 6 **VII. Conclusion**

7 In light of the meaningful benefit to the record in developing the specific, factually  
8 supported lines of inquiry identified herein and the need to resolve the significant factual  
9 disagreements between SKTI's Motion to Quash and the People's Complaint, jurisdictional  
10 discovery is likely to produce evidence of facts establishing jurisdiction—both in the form of  
11 SKTI's day-to-day control over and unity with SKEA, and in the form of that unity with and  
12 control over SKEA demonstrating SKTI's own contacts with California. Moreover, it is also  
13 likely to provide the Court with a more developed record from which to resolve factual disputes.  
14 Finally, due to the high degree of likelihood of coordination with the federal actions, the Court  
15 can benefit from this better developed record at a limited additional cost to the parties.  
16 Accordingly, the People request that this Court grant the People leave to take jurisdictional  
17 discovery and continue the deadline to oppose the Motion to Quash.

18  
19  
20 Dated: November 16, 2020

Respectfully Submitted,

21 XAVIER BECERRA  
22 Attorney General of California

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### **DECLARATION OF SERVICE BY E-MAIL**

Case Name: **State of California v. Vitol, Inc.; SK Energy Americas, Inc.; SK Trading International Co. Ltd., and Does 1-30, inclusive**  
No.: **CGC-20-584456**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

I hereby certify that on November 16, 2020, I electronically filed the following documents with the Clerk of the Court by using the File & ServeXpress system:

#### **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S BRIEF IN SUPPORT OF JURISDICTIONAL DISCOVERY**

In addition, on November 16, 2020, I served the attached **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S BRIEF IN SUPPORT OF JURISDICTIONAL DISCOVERY** by transmitting a true copy via electronic mail, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 16, 2020, at San Francisco, California.

G. Guardado  
Declarant

  
Signature